

Appendix 8-3 CURRENT LAWS AND REGULATIONS

The following is a listing of the most pertinent federal laws, regulations and orders that have as their focus the protection or preservation of cultural and natural resources on or near to the INEEL:

FEDERAL STATUTES

- ✓ **Archeological Resources Protection Act** [16 USC §§ 470aa et seq.]: No significant changes.
- ✓ **Arts and Artifacts Indemnity Act** [20 U.S.C. §§ 971 et seq.]: No significant changes.
- ✓ **Atomic Energy Act** [42 USC §§ 2014, 2021, 2022, 2111, 2113, 2114]: No significant changes in the statute itself, but there have been numerous changes in the DOE Orders, as well as the DOE regulations that arise pursuant to this statute. These are discussed in sections on regulations and orders, below.
- ✓ **Bald Eagle Protection Act** [16 USC § 668] and **Golden Eagle Protection Act** [P.L. 87-884]: No significant changes.
- ✓ **Clean Air Act** [42 USC §§ 7401 et seq.]: Changes due to the implementation of the new "MACT Rule" are important and are discussed in the overview on air. Because the rule imposes tighter restrictions on emissions of metals in incinerator units, the NWCF and WERF have ceased operations. The environmental impacts of storing these wastes, rather than treating them, was analyzed under the No Action alternative.
- ✓ **Clean Water Act** (33 USC §§ 1251 to 1387, et seq.): Changes regarding section 404 and the dredge and fill regulation by the COE is probably not significant, but might merit some technical evaluation.
- ✓ **Comprehensive Environmental Response, Compensation and Liability Act** (CERCLA; also referred to as "Superfund") and the **Superfund Reauthorization and Amendments Act of 1986** (42 USC §§ 9601 to 9675, et seq.): Aside from reauthorization, significant changes affecting DOE arise from case law (e.g. *Fort Ord Toxics* case, which provides citizens the right to sue prior to completion of cleanup] but this change should be administrative only. See the ER discussion for technical changes.
- ✓ **Endangered Species Act** [16 USC §§ 1531 to 1544]: Nothing that merits separate technical evaluation.
- ✓ **Energy Policy Act of 1992** [16 USC 797 note, 106 Stat. 2776]: Nothing that merits separate technical evaluation.
- ✓ **Energy Reorganization Act of 1974** [42 USC §§ 5801, 5811 to 5820, 5841 to 5849, 5871 to 5879, and 5891]: Nothing that merits separate technical evaluation.
- ✓ **Emergency Planning and Community Right-to-Know Act** (42 USC §§ 11001 et seq.): Nothing that merits separate technical evaluation.

- ✓ **Federal Facility Compliance Act** [42 USC §6901 note]: No changes in the statute; any other changes are negotiated by DOE under the STP.
- ✓ **Federal Insecticide, Fungicide and Rodenticide Act** (7 USC §§ 136 to 136y et seq.): No significant changes.
- ✓ **Federal Water Pollution Control Act** [FWPCA] (33 USC §§ 1251 to 1387): Nothing that merits separate technical evaluation.
- ✓ **Hazardous Materials Transportation Act** [HMTA] (49 USC §§ 1801 et seq.): Nothing that merits separate technical evaluation.
- ✓ **Low Level Radioactive Waste Policy Amendments Act** [LLRWPA] [42 USC §§ 2021b to 2021j]: Nothing that merits separate technical evaluation.
- ✓ **National Environmental Policy Act** [42 USC §§ 4321 to 4370e]: No changes in the statute itself, although there have been several changes in the guidance documents developed by both CEQ and DOE regarding the interpretation and implementation of the requirements in the regulations arising from the statute.
- ✓ **National Historic Preservation Act** [16 USC §§ 470a et seq.]: Nothing that merits separate technical evaluation.
- ✓ **Nuclear Waste Policy Act** (42 USC §§10101 to 10270): Nothing that merits separate technical evaluation.
- ✓ **Occupational Safety and Health Act** (29 USC §§ 651 et seq.): Nothing that merits separate technical evaluation.
- ✓ **Oil Pollution Control Act of 1990** [33 USC §§ 1301, 2701 to 2761]: Nothing that merits separate technical evaluation.
- ✓ **Pollution Prevention Act of 1990** (42 USC §§ 13101 to 13109): The INEEL is continuing to enhance its pollution prevention programs and activities, so any additional changes under this statute should have a positive impact to the environment.
- ✓ **Resource Conservation and Recovery Act of 1976** (42 USC §§ 6901 to 6992k): Although there have been no pertinent changes in the statute since 1995, the 1995 document assumed that RCRA did not apply to SNF because it is not considered "waste." Given further developments in EPA Administrative interpretations of the RCRA statute, however, an area of concern remains that was not addressed in Chapter 6 of the 1995 EIS. This is the RCRA question of whether the SNF at the INEEL contains materials, which, by themselves are "RCRA hazardous waste" (components of the cladding, for example), or whether the storage and eventual disposition of the SNF itself constitutes what is referred to as "speculative accumulation" pursuant to RCRA. Along the same lines, the high level waste at the INEEL, both liquid and calcine, contains RCRA hazardous materials. The possible environmental significance of this legal issue is the following. In the 1995 EIS, the assumption was that both the SNF and the High Level Waste would be transported to Yucca Mountain for permanent disposal or disposition. At the present time, the Yucca Mountain project plans do not contemplate obtaining a RCRA permit for the disposal of RCRA-hazardous waste materials at the Yucca Mountain facility. From an environmental

standpoint, it is possible that SNF and HLW previously designated as going to Nevada would in fact remain at the INEEL until a RCRA-compliant HLW and SNF geologic repository is open in the future.

- ✓ **Safe Drinking Water Act** (42 USC §§ 300f to 300j) and the **Safe Drinking Water Act Amendments of 1996** [42 USC §§ 300f to 300j]: Nothing that merits separate technical evaluation.
- ✓ **Toxic Substances Control Act** (15 USC §§ 2601 to 2692): Both the statute and the regulations apply to toxic substances that are part of the activities carried out by the INEEL. On the Site itself, the two predominant substances are asbestos and PCB's. At the in-town IRC facility, the biological warfare agents are subject to TSCA restrictions.
- ✓ **Uranium Mill Tailings Radiation Control Act** [42 USC 42 USC §§ 7901 to 7942]: Nothing that merits separate technical evaluation.
- ✓ **Water Resources Development Act of 1992** [106 Stat. 4797]: Nothing that merits separate technical evaluation.
- ✓ **Water Resources Research Act of 1984** [42 USC §§ 10301 to 10309; 98 Stat. 97]: Nothing that merits separate technical evaluation.
- ✓ **Waste Isolation Pilot Plant Land Withdrawal Amendment Act of 1996** [110 Stat. 2851]: WIPP is now open and accepting mixed and hazardous waste from INEEL, which is a direct outgrowth of this amendment to the WIPP Land Withdrawal Act. In 1995, the Act itself required that before mixed TRU wastes from the INEEL could be disposed at WIPP the DOE had to comply with a much more stringent RCRA requirement regarding certain listed hazardous wastes. When the Amendments became effective, the ability for WIPP to accept the INEEL's mixed waste became more definite.

Federal Regulations

- ✓ **10 CFR Parts 51.20** [Nuclear Regulatory Commission's regulations on compliance with NEPA]: Because of the change in DOE policy to encourage NRC licensing of various facilities and operations on the INEEL, these regulations are pertinent because they describe the requirements of NRC to prepare Environmental Reports and other NEPA documents. The environmental impacts to the INEEL of having the NRC required to perform additional NEPA studies should be beneficial overall to the understanding at the INEEL of the possible environmental impacts of operations and activities.
- ✓ **10 CFR 51.40 et seq.** [Nuclear Regulatory Commission's regulations on licensing the construction and operation of privately owned and operated nuclear facilities]: Because of the DOE policy of privatization, these regulations now apply to several different privately owned and/or operated facilities on the INEEL. No significant environmental impacts from application of these regulations are anticipated.
- ✓ **16 CFR Parts 1500 et seq.** [Asbestos Labeling]
- ✓ **29 CFR Part 1910** [Occupational Safety and Health]: Even with the change in DOE's policy of now encouraging private sector owning and/or operating facilities at the INEEL, the Occupational Safety and Health Administration does not exercise jurisdiction on the Site.

Worker Safety and Health continues to be the responsibility of the DOE, as set out in the Atomic Energy Act. This should not cause any significant change to worker safety and health, as analyzed in the 1995 EIS.

- ✓ **40 CFR Part 50 et seq.** [Clean Air Act]: One important change in the regulations since 1995 is the adoption of the Maximum Achievable Control Technology ("MACT rule") for hazardous waste combustors/thermal treatment units. The result of this regulatory change is that the Waste Experimental Reduction Facility is no longer able to treat certain types of waste. Instead, that waste is being sized, sorted and repackaged for disposal on the INEEL site. Whether this has any significant environmental impact is discussed in another section of the Supplement Analysis.
- ✓ **40 CFR Part 100 et seq.:** Nothing that merits separate technical evaluation.
- ✓ **40 CFR part 141 et seq** [Safe Drinking Water Act]: The Snake River Plain Aquifer has been designated a "Sole Source Aquifer," which was not a factor analyzed in the 1995 EIS to the greater depth that the regulations require. Whether the impacts to a sole source aquifer would be determined to be significant when subject to the more rigorous analytical requirements of the regulations is not clear.
- ✓ **40 CFR part 152, et seq.** [Federal Insecticide, Fungicide and Rodenticide Act]: Nothing that merits separate technical evaluation.
- ✓ **40 CFR part 240 et seq.** [Resource Conservation and Recovery Act] -- See RCRA statute discussion.
- ✓ **40 CFR parts 280 - 282** [Underground Storage Tanks]: Nothing that merits separate technical evaluation.
- ✓ **40 CFR part 300 et seq.** [CERCLA]
- ✓ **40 CFR parts 300, 355, 370 and 372** [Emergency Planning and Community Right-to-Know Act]: Nothing that merits separate technical evaluation.
- ✓ **40 CFR parts 370 through 372** [Pollution Prevention]: Nothing that merits separate technical evaluation.
- ✓ **40 CFR part 700 et seq.** [Toxic Substances Control Act]: Changes in the regulations with respect to management of PCB contaminated debris and materials allows for increased disposal of the materials directly on the INEEL rather than treatment and removal to an offsite disposal area. Technical evaluation of amount of additional materials that would be disposed materials onsite should be evaluated.
- ✓ **49 CFR part 171 et seq.** [Hazardous Materials Transportation]: Nothing that merits separate technical evaluation.

Federal Constitution

- ✓ **Commerce Clause** – [This clause prohibits enforcement of any state or local law that would interfere with "interstate commerce." Cases regarding the Commerce Clause have concluded that most state or local laws that prohibit the shipment of radioactive materials

are unconstitutional and therefore void. This is applicable for all of those activities planned that involve shipments of radioactive materials or waste either to the INEEL, or from the INEEL to another location outside Idaho.]: Nothing that merits separate technical evaluation.

Native American (Tribal) Laws

- ✓ **Shoshone-Bannock Tribes Ordinance** [This ordinance prohibits the shipment of radioactive materials across the Fort Hall Reservation.]: Nothing that merits separate technical evaluation.

Executive Orders (Orders by the President)

- ✓ **EO 11514, National Historic Preservation:** Nothing that merits separate technical evaluation.
- ✓ **EO 11988, Floodplain Management:** Ongoing evaluations are considered in the technical discussion.
- ✓ **EO 11990, Protection of Wetlands:** Nothing that merits separate technical evaluation.
- ✓ **EO 12114, Environmental Effects Abroad of Major Federal Actions:** Nothing that merits separate technical evaluation.
- ✓ **EO 12344, Naval Nuclear Propulsion Program:** Nothing that merits separate technical evaluation.
- ✓ **EO 12898, Right to Know and Pollution Prevention:** Nothing that merits separate technical evaluation.
- ✓ **EO 12898, Environmental Justice:** Nothing that merits separate technical evaluation.
- ✓ **EO , Protection of Children:** Although this EO was passed after the 1995 EIS was completed, the technical guidance for implementation is very poorly developed. The HLW EIS on this topic should be reviewed to determine if there are any significant technical issues.

Additional Obligations, Requirements or Agreements

- ✓ **Settlement Agreement with the Public Service Company of Colorado:** Segments of SNF from the Fort St. Vrain reactor are now to remain in Colorado rather than to be shipped to Idaho, as anticipated in 1995. Although probably not significant, the overall environmental impacts to the INEEL from this agreement should be beneficial.
- ✓ **Long Term Stewardship:** The role of the INEEL in LTS activities is poorly understood to date; proposed definition of roles and responsibilities is in progress, and it is possible that additional responsibilities undertaken in Idaho will have impacts, but a separate NEPA evaluation is recommended.